

Serial No. 09/669,363
Applicant: Pennington
Group Art Unit: 3763

Patent
20450-64

REMARKS

Claims 1-37 of the present application are currently pending. In the Office Action, claims 1-11 and 14-37 stand rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

In response, the Applicant has amended claims 1, 5-8, and 15 to more clearly recite the elements thereof. The Applicant notes that such amendments are being made solely in response to the Examiner's rejections based on 35 USC §112, second paragraph. As a result, the Applicant respectfully submits that all the pending claims are in condition for allowance and allowance of the claims is requested.

Claims 1-4, 9-14, 16, and 18-37 of the present application stand rejected under 35 USC §103 as being unpatentable over United States Pat. No. 6,328,229, issued to Duronio et al. (hereinafter Duronio). To establish a prima facie case of obviousness, the Examiner must meet three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the teachings of the references. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (see MPEP §2143.03).

Claim 1 is directed to a fluid delivery device for minimally invasive surgical procedures and includes a tubular component having a distal end for insertion into a body cavity, and a spray tip assembly attached to the distal end of the tubular component for discharging fluid into the body cavity. The spray tip assembly includes a first mechanical breakup unit having at least one feed port configured to direct a fluid into a first spin chamber and issue into a first exit port, and a second mechanical breakup unit positioned alongside the first mechanical breakup unit and having at least one feed port configured to direct a fluid into a second spin chamber and issue into a

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second exit port. The first and second exit ports extend through the external surface of the spray tip. The specification of the present application states that the mechanical breakup units "are known in the art as pressure swirl atomizers." (See p.9, l. 1). Generally, atomizers are devices for converting a substance to a fine spray. Swirls formed within an atomizer define the shape and volume of the material dispensed from the atomizer. During use, the first component is received within the first mechanical breakup unit, directed into the first spin chamber, and issued from the device through the first exit port as a spray. Similarly, the second component is received within the second mechanical breakup unit, directed into the second spin chamber, and issued from the device through the second exit port as a spray.

In the Office Action the Examiner stated that Duronio describes a spray tip comprising "a first mechanical breakup unit(26) having at least one feed port (see proximal end of 26) configured to direct a fluid into a first spin chamber and issue into a first exit port (55a), and a second mechanical breakup unit (28) positioned along side of the first mechanical breakup unit (26) and having at least one feed port (see proximal end of 28) configured to direct a fluid into a second spin chamber and issue into a first exit port (55b). The Applicant respectfully submits that the Examiner has mischaracterized the elements of Duronio. The specification of Duronio describes reference numbers 26 and 28, respectively, as a first and second conduit extending through the body portion 12, each having a first end 30a, 30b, respectively, and a second end 32a, 32b, respectively, coupled to a void 20. (See Col. 3, l. 44-49). A conduit may be defined as a pipe or channel for conveying fluids. As such, the Applicant respectfully submits that the first conduit 26 and second conduit 28 are not mechanical breakup units (pressure swirl atomizers) as defined by the Applicant of the present application. As such, the Applicant respectfully submits that Duronio fails to teach or suggest all the claim limitations of the claims 1-4, 9-14, 16, and 18-37 of the present application in accordance with MPEP §2143.03.

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Claim 17 of the present application stands rejected under 35 USC §103 as being unpatentable over Duronio in view of United States Pat. No. 6,121,341, issued to Sawhney. Claim 17 of the present application, which is indirectly dependent on claim 1, recites an optical fiber positioned through the spray assembly. As stated above, Duronio fails to teach or suggest all the elements of claim 1 insofar as Duronio fails to include a first and second mechanical breakup unit. Like Duronio, Sawhney fails to teach or suggest a first and second mechanical breakup unit, each individually in communication with separate component sources. As such, Sawhney fails to teach or suggest all the claim limitations of claim 1. Lastly, in combination, Duronio and Sawhney fails to teach or suggest a device having multiple mechanical breakup units in communication with separate component sources. Moreover, neither Duronio nor Sawhney contain a suggestion or motivation to modify or combine their respective devices to produce the device recited in claim 1 of the present application. As such, the Applicant respectfully submits that the Examiner has failed to establish a prima facie case of obviousness in accordance with MPEP §2143.03.

For the foregoing reasons, all claims presently on file in the subject application are in condition for immediate allowance, and such action is respectfully requested.

If it is felt for any reason that direct communication with applicants' attorney would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned attorney at the below listed telephone number.

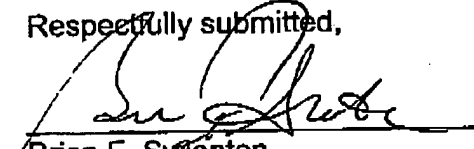
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The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-1329.

Dated: 1/8/04

Respectfully submitted,


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